

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

BERTON G. TOAVS,

Plaintiff,

v.

ROBERT BANNISTER, et al.,

Defendants.

Case No. 3:12-cv-00449-MMD-WGC

ORDER ACCEPTING REPORT AND  
RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (dkt. no. 17) ("Recommendation") relating to Plaintiff Berton G. Toavs' Motion for Preliminary Injunction (dkt. no. 3). No objection to the Recommendation has been filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, the Court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. *See United States v.*


1 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review  
2 employed by the district court when reviewing a report and recommendation to which no  
3 objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.  
4 Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that  
5 district courts are not required to review "any issue that is not the subject of an  
6 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then  
7 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.  
8 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to  
9 which no objection was filed).

10 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to  
11 determine whether to adopt Magistrate Judge Cobb's Recommendation. Plaintiff's  
12 medical history does not reveal any documented instances of deliberate indifference on  
13 the part of Defendants. On the contrary, his medical care appears to have been  
14 adequate and timely. Although he alleges that Defendants have withheld relevant  
15 information, Judge Cobb correctly ruled that this bare assertion without support fails to  
16 raise any Eighth Amendment concerns. Similarly, Toavs has failed to demonstrate  
17 irreparable history in the absence of an injunction ruling, relying on speculation without  
18 documented evidence to support his claim that he risks losing use of his left arm in the  
19 absence of court intervention. As a result, Toavs fails to satisfy the requirements for the  
20 Court's granting of preliminary injunctive relief.

21 IT IS THEREFORE ORDERED that the Report and Recommendation of  
22 Magistrate Judge William G. Cobb (dkt. no. 17) be accepted and adopted in its entirety.

23 IT IS FURTHER ORDERED that Plaintiff Berton G. Toavs' Motion for Preliminary  
24 Injunction (dkt. no. 3) is DENIED.

25 DATED THIS 16<sup>th</sup> day of May 2013.

26   
27 MIRANDA M. DU  
28 UNITED STATES DISTRICT JUDGE